An Investigation into Allegations of Administrative Favouritism by the Ministry of Forests to Doman Industries Ltd.

Public Report No. 20

September 1989

Ombudsman

Fairness for all in British Columbia

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Legislative Assembly
Province of British Columbia

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A. INTRODUCTION

The Complaint

On April 5, 1989, this office received a written complaint from Robert Williams, M.L.A. In the complaint he set out concerns arising from various letters and other Ministry of Forests documentation which had come into his possession concerning Doman Industries. Among the allegations expressed were the company's failure to adhere to allowable annual cut (AAC) requirements as established by the Ministry of Forests; the lack of any penalty imposed by the Ministry for failure to adhere to AAC requirements, even though other firms in similar circumstances suffered a reduction in AAC; matters of forestry trespass; and general concerns including adequacy of silvicultural regeneration of harvested lands, and an increase in the rate of harvest in an area deemed by the Ministry of Environment to be environmentally sensitive.

Form of Investigation

Because this complaint was brought to this office by a Member of the Legislative Assembly by way of a public letter which raised issues of broad public concern, the results of this investigation are being published as a Public Report pursuant to Section 30(2) of the Ombudsman Act.

This office's investigation began with full review of files at the Victoria headquarters of the Ministry of Forests as well as files from the Regional Office of the Ministry in Burnaby (which has administrative jurisdiction over the mid-Coast Forest District) and the District Office for the Ministry of Forests, mid-Coast Forest District, located in Bella Coola. Review of the voluminous file material was supplemented by personal interviews with personnel at all levels of the administrative hierarchy within the Ministry. Those individuals interviewed included resource officers, operations managers and district managers at the district level; regional managers; assistant deputy ministers (past and present), deputy ministers (past and present), ministers (past and present); and former ministry personnel now holding senior positions in the private sector. Senior officers of Doman Industries were also interviewed and the company's new log merchandising plant at Duke Point near Nanaimo was inspected.

Because of conflicting opinions within the Ministry as to the adequacy of Doman Industries' silvicultural activities in 1982 and '83, a professional silviculture evaluation was carried out August 28, 1989, at the request of this office, to determine the results of the company's promise to fulfil its reforestation obligation. The investigation was conducted by Dr. Karel Klinka, adjunct professor of Forest Ecology, Faculty of Forestry, U.B.C., Peter Ackhurst, Director of the Silviculture Branch, Ministry of Forests, and Jerry Kennah, Silviculture Officer for the Vancouver Forest Region.

Investigative Issues:

1) Access logging: Did Doman Industries engage in inappropriate forms of logging in violation of established forest service policy? If so, what type of sanctions were levied as against Doman Industries and, if none were, why not?

2) Trespass: (In this investigation, an issue arising primarily out of the access logging issue) In forestry, trespass may take a number of forms, relevant examples being cutting in a geographic area which is not within the permit holder's authorized cutting area or cutting by use of an unauthorized method within the licensed area. In both instances, a monetary penalty may be levied by the Ministry. Doman Industries committed the latter form of trespass in 1982, and the monetary penalty was calculated to be approximately $194,000. This penalty was subsequently cancelled. Why?

3) Silviculture issues: Did Doman Industries adequately perform its obligation to replant areas which it had logged? If there was a penalty for inadequate silvicultural performance, was the penalty enforced? If not, why not?

4) Allowable annual cut: Documentation indicates that Doman Industries' annual harvest for the period 1982 - 1986 was significantly less than the rate of harvest required by the stipulated AAC. Was a penalty enforced because of this? If not, why not?

5) Mill construction: Documentation, including the license by which Doman Industries obtained its first timber tenure indicates that construction of a pulp mill (later amended to include the option of another type of wood waste processing facility) or other wood waste processing facility was required as a term of the award of tenure. What factors account for the delay in the company's performance of this commitment? Has the performance been complete or partial? Have any sanctions been imposed by the Ministry of Forests for the company's failure, if any, to meet this commitment? If not, why not?

Scope of this investigation and limitations:

The office of the Ombudsman approached this investigation with a general presumption that Doman Industries, as a tenure holder, was entitled to reasonable treatment by the Ministry in accordance with expectations created by terms of the written tenure document, and in a manner consistent with the requirements of the Forest Act; and, conversely, that Doman Industries was obliged to conduct its activities according to these same contractual and statutory provisions. It is within this presumption that the conduct of Doman Industries, the Ministry of Forests, and all relevant offices of government have been reviewed and assessed.

It is important to note that no detailed comparison of Doman Industries has been made with other firms, either in the forest products industry generally or within the same geographic timber harvesting area. The scope of such an investigation would be beyond the resources of this office. However, the issues raised can be reviewed effectively on their own. As well, no critique of general harvesting or silvicultural standards as set out and enforced by the Ministry of Forests has been undertaken. Rather, the objective of this investigation has been to determine whether acts or omissions of the Ministry of Forests were justifiable in light of the

performance by Doman Industries of its contractual and statutory responsibilities. Certain aspects of forest harvest practice, silviculture techniques and presumptions, and general principles of forest management are regularly questioned by various groups and individuals on technical, environmental, philosophical and economic grounds. This report makes no attempt to comment on the general standard applied to forestry in British Columbia, and simply accepts as a reference mark for administrative fairness the standards imposed by the Ministry of Forests pursuant to its governing legislation and the terms of agreements entered into between the Ministry and private parties such as Doman Industries.

B. THE STATUTORY FRAMEWORK

The Forest Act is the basic legislation by which timber harvesting is regulated in British Columbia. The Act sets up a framework for:

a) the general assessment and classification of forests in the province, and determination of the annual rate at which the forest resource may be cut, or AAC;
b) the granting of rights to harvest Crown timber and the authority of the province to enter into a variety of agreements to that end, including forest licenses, tree farm licences, timber licences, etc.;
c) the increase or reduction in AAC by the Minister or other designated Ministry personnel according to the tenure holders' performance;
d) the scaling of timber to ensure a proper return to the province for the Crown resource;
e) the development of necessary roads and provision for recreational use of the forests;
f) protection of the forest resource against fire, insects and disease;
g) the vital function of silviculture: the planning and execution of the planting of harvested areas with new seedling stock of a type suitable for that specific biogeoclimatic zone and area. This responsibility extends now to the maintenance of the planted stock and the prevention of brush overgrowth to the point where the young tree is "free to grow", meaning it has overtaken its competitors for space and sunlight and can grow vigorously without further brush control;
h) manufacturing with Crown timber, trespass and recovery of monies due to the Crown, and miscellaneous provisions, including the important functions of appeals, penalties, regulations, and offences.

An example of a regulation under the Forest Act which is of critical importance is the Silviculture Regulation 147/88, which sets out the requirements for "basic silviculture" including the use of a Pre-Harvest Silviculture Prescription (PHSP), which is a detailed plan, submitted to the Ministry for approval, showing the re-planting program of the applicant to replace harvested, destroyed or damaged trees. The goal of the PHSP is to provide a free-growing, ecologically suitable crop of trees in a manner which also facilitates protection of the soil base.

Also of note is the Ministry of Forests Act, which sets out, independent of the technical goals of the Forest Act, the mandate and purposes of the Ministry. It specifies the Minister's duties and the purposes and functions of the Ministry of Forests; as well, it provides for the important functions of decennial analysis (every 10 years) of the forest and range resource, and a five-year resource program.

The Ministry of Forests Act sets out the mandate of the Ministry to govern the utilization of the forest resources for the benefit of the province as a whole. The provisions of the Forest Act, read in conjunction with the companion Regulations, are then administered pursuant to the general goals of the Ministry of Forests Act. This regulatory framework works within the discretionary limits granted to the Minister and ministry staff by the statute and regulations; this discretion is also exercised within the social, economic, and political environment of the day, and the contracts between the Ministry and the timber tenure holder. With respect to the contracts, the particular form of timber tenure is important to remember when analyzing the performance of both government and private parties in circumstances such as the allegations considered in this report. There are six main forms of timber tenure:

a) The Timber Sale Licence (TSL) - this may be major (based on volume of wood), or it may be minor (area based). The major TSL will contain for the most part all of the stipulations of a Forest Licence agreement; the minor TSL does not specify an AAC.

b) The Timber Licence - this type of agreement was devised to replace what were formerly known as old temporary tenures. If the tenure is not included within a Tree Farm Licence (TFL) and the obligations imposed by that TFL, all harvesting operations must be carried out under

cutting permits issued in conformity with approved operating plans prepared by professional foresters and submitted by the licencee.

c) The Pulpwood Agreement - primarily provides the security of a back-up inventory of woodfibre to supply a processing plant in the event of temporary disruption of the supply of wood residues either from the tenure-holder's own forest operations, or as available on the pulpwood market.

d) The Woodlot Licence - this is intended to operate like a TFL, but with less onerous requirements, in order to promote high levels of forest management on small isolated parcels of Crown Forest Land.

e) The Forest Licence - this replaced the Timber Sale Harvesting Licence (TSHL) which was in use prior to 1978, before the introduction of the new Forest Act. It is the predominant vehicle for licencing of timber operations in the province, comprising 61% of the total AAC from all Timber Supply areas, including Tree Farm Licences. This is the type of tenure held by Doman Industries in the mid-Coast Forest District.

f) The Tree Farm Licence - this is the most significant and lengthy form of timber tenure; it is area-based, granting to the tenure holder the authority to manage the timber resources according to approved management and working plans. The licence has a term of 25 years, with an "evergreen" clause providing for systematic extension of the tenure by issuance of replacement 25 year tenures at ten year intervals. Because this investigation has not dealt specifically with TFL's, no further description or analysis has been undertaken by this office.

C. THE INTRODUCTION OF "SYMPATHETIC ADMINISTRATION".

The "boom" years of the late 1970's turned into a major recession in 1981, the adverse effects of which were still felt as late as 1985. The decline in North American construction from 1981 onward had an immediate and dramatic impact on the sale of lumber, which rippled back through the industries which shipped, milled, transported, harvested, and otherwise dealt with the timber resource. The result for industry and workers was widespread layoffs and downsizing of operations.

The provincial government's response to this situation was to institute a policy which relaxed many of the standards in harvesting practices and cut control levels with which the timber companies would have had to comply.

This policy was known as "sympathetic administration". While this name accurately describes the intent of the policy, it may also have had the effect of reinforcing in some people's minds the opinion that an inappropriate closeness existed between government and industry. Such notions of regulatory "capture" - where the regulated entities effectively control the regulators and their policies - have not been investigated in this report. This office has, however, reviewed the documentation memos by which sympathetic administration came into being and was later discontinued.

Sympathetic administration formally began with a directive on October 1, 1981, from Deputy Minister T.M. Apsey to all Regional Managers and Branch Directors, which included these observations:

> A number of companies are experiencing cash flow problems and difficulty in meeting cut control requirements. We are no doubt going to receive a large number of requests for relief on cut control and patience in collecting accounts receivable.
>
> We have some flexibility in our policies and must be prepared to exercise this flexibility on an individual basis. While we have the responsibility to manage and protect Crown interest, we also have a responsibility of maintaining a viable industry.

Assistant Deputy Minister A.C. MacPherson outlined on October 9, 1981, the practical elements of sympathetic administration which were provided to the Ministry as illustrations of "areas which you may assist industry":

1. Where reasonably possible, allow licensees to harvest relatively high net value timber. The critical factors are timber quality, logging costs and travel distance.

   Where reasonable, consider performance for cut control purposes on a TSA (Timber Supply Area) basis.

2. Relax the standard of utilization in insect killed and decadent stands by changing the minimum top diameter requirement to 13 cm, and by making additional modifications on a site specific basis.

3. Ensure that Section 88 credits are processed promptly.

Section 88 credits are reductions to stumpage payment owed to the Crown in certain prescribed instances where expenses are incurred by the licensee relating to matters such as the construction of logging roads.

Cut control performance requirements under sympathetic administration were considerably relaxed in 1981 and 1982. Normal requirements were intended to be reinstituted in 1983 but were extended by Ministerial discretion to include that year as well. "Cut control" refers to a licencee's performance in harvesting a specific volume of timber on an annual basis, and represents a calculated trade-off between economic activity and over-exploitation of a resource which must be renewed. If a licencee harvests less than 90% of the AAC, it may at the end of a 5 year cut control period be penalized by having the AAC reduced by the amount of the deficiency. Overcutting can on a similar basis be penalized by way of AAC reduction or penalty billing.

It was not until early in 1987 that a decision was made by Ministry executives to remove the last elements of sympathetic administration, in recognition of improved economic circumstances in the forest industry. It is within this historical context that the monitoring and regulation of Doman Industries has been reviewed and assessed.

D. REVIEW AND DISCUSSION OF ISSUES

Contractual Background

As a result of successfully competing for timber harvesting rights pursuant to what was known as the "Mid-Coast Proposal", Doman Industries in 1977 secured a supply of timber in the annual amount of 210,000 cunits per year (1 cunit = 100 cubic feet, or approximately 2.85 m^3) secured by way of three Timber Sale Harvesting Licences (TSHL's), each with terms of twenty years. TSHL A09197 authorized the annual harvest of 80,000 cunits in Block 1 of the Dean PSYU (Public Sustained Yield Unit) - an area of forest land designed to be planned, monitored, and regulated as one unit, although it might contain numerous sub-units or blocks tenured to various timber harvesting firms; it was the forerunner to what is today known as the Timber Supply Area); TSHL A09937 authorized 80,000 cunits annually in the Rivers Inlet PSYU; and TSHL

A10113 authorized the cutting of 50,000 cunits annually in the Nootka PSYU.

The TSHL's set out in detail the obligations, rights, and privileges of the company with respect to:

a) cutting authority;
b) lands subject to occupation;
c) submission and revision of development plans;
d) cutting permit (the final document issued by the Ministry after all procedural and technical requirements have been met. It is only the cutting permit which provides the legal authority to cut down a tree on Crown land);
e) cut control (AAC requirements);
f) log marking and scaling;
g) forest and water resource protection;
h) roads and miscellaneous provisions, including the obligation of the company to construct a pulp mill with a capacity not less than three hundred tons per day. Construction of the mill was to be completed by December 31, 1981.

While the TSHL provided a termination clause for non-performance of the licensee's obligation, it also provided that "the licensor, in his discretion, may waive any default or extend any time for the completion or commencement of any act."

In the original competition for the three TSHL's, only one organization other than Doman Industries submitted a bid, a private company which at that time operated a sawmill on the False Creek lands in Vancouver. This competing proposal included the construction of a new sawmill in Surrey but did not, as the tender required, include a proposal for the construction of a pulp mill. It was therefore rejected by the Ministry. Doman Industries proposed a 300 ton per day thermo-mechanical pulp processing plant to be built at Duke Point near Nanaimo, on land held by the B.C. Development Corporation.

Doman Industries' proposal was analyzed in detail by the Ministry. In Ministry briefing papers it was noted that the company at that time (October, 1977) operated 4 sawmills; 3 were on Vancouver Island, one on the mainland, and most of Doman's log supply was purchased on the open market. Doman Industries proposed, as contemplated by the tender requirements, to build both a sawmill and a pulpmill. The Ministry noted at that time that the price of pulp was low and continuing to fall. The Doman pulpmill was projected to begin production in the 3rd quarter of 1981, "by which time it

is expected the market will have picked up." In fact, the opposite happened at precisely that projected time, as North America slid into a deep economic recession.

Specific Issues Raised: Investigation and discussion.

Access Logging, and Trespass

"Access logging" in this instance refers to a particular method of moving trees after they have been felled (cut down) and bucked (cut into standard lengths for transport). Access logging distinguishes itself by the extent to which spur roads are built from the main logging road to allow close access to the cut timber for the particular machine used. In this case the machine used was an experimental longboom (or heelboom) loader with a 130 foot long boom mounted with grapple attachment at the far end. This is balanced with a counterweight at the opposite end, with the load transferred through angled cables supported near the operator's cab of the machine by a vertical mast, leading one Ministry resource officer to state that "it looked like a ship without sails". It was essentially a modification of a heavy-duty crane, with a pivoting body mounted on steel crawler tracks. Doman's intention in employing this type of machine was to reduce the cost of logging operations; a significant portion of the cost being the expense of moving felled timber to an ocean log dump, for assembly into booms for transport to mills.

The Ministry staff at the District level were united in their opposition to the use of this machine, arguing that multiple spur roads contributed to both site and soil degradation, in that the often thin layer of organic soil would be disturbed or removed altogether and would hamper the reforestation process. District staff were of the opinion that the high-lead or, alternatively, grapple yarding system of log transport should be used. The hi-lead (or tower) system requires the creation of a suspended cable transport by which logs are supported or grappled at one end and wholly suspended, or dragged with one end touching the ground. This method is the most costly, apart from helicopter transport of logs, in terms of both time and manpower, but is also one the least damaging methods when considering environmental impact. Grapple yarding utilizes a machine designed to lift or tow logs with minimum ground impact.

There are even less costly yarding methods than the longboom loader, and these usually involve a "skidder" machine, which will tow the log across the ground by means of a steel cable. The skidder may be a specialized

machine built for the purpose (perhaps with flotation tires to minimize ground pressure and resulting site disturbance), or it may simply be a bulldozer which, in effect, creates its own roads as it goes. With respect to the question of appropriate regulation of logging activities within the context of access logging, two separate incidents were examined by this office. In each case, the perceptions of front-line personnel differed markedly from those of senior personnel. The incidents occurred in 1982, 1985, and 1987 and have been reviewed as representative of the intermittent conflict between Doman Industries and the Ministry of Forests.

a) 1982 - The "Technical" Trespass

At that time (May and June, 1982), Doman Industries was logging in the Kimsquit Drainage under the authority of a cutting permit which specified tower or grapple yarding only. Doman Industries logging contractor, contrary to the permit requirement, carried out "cat logging" (skidding of logs with bulldozers). This conduct elicited a letter of condemnation from the District Manager to Doman Industries. In addition to site disturbance and the accompanying difficulties in reforestation, the District Manager pointed out that the stumpage payable by Doman Industries to the Crown was calculated on the basis of a proposal by the company to use a higher cost method of yarding, namely tower or hi-lead. In utilizing a low cost method, Doman Industries effectively increased the amount of revenue it would be able to keep, as the stumpage payable would have been much higher if the company's true costs had been known at the time stumpage was originally calculated.

1982 - The Trespass Billing

The regulatory response to this conduct of Doman Industries' contractor was to produce a timber trespass report. It should be noted that trespass in the forest industry can take a number of forms: it may involve a logger cutting in an area in which he holds no form of tenure from the Crown, in which case it might be treated as a matter of log theft with possible criminal consequences. A second class of trespass is broadly termed "technical trespass" and may refer either to a tenure holder's logging actions in an area of its tenure in which it is not yet entitled to log (i.e. no cutting permit has been issued), or it may refer to logging operations in an authorized area (cutting permit issued), but utilizing a logging method not authorized by the

terms of the cutting permit. This latter case applied in the context of Doman's "cat logging" trespass. It should also be noted that the above descriptions of trespass are illustrations only and are not a complete catalogue of the forms of trespass recognized by the Ministry of Forests.

The trespass report as prepared July 22, 1982, included full penalty stumpage, that is, stumpage payable in addition to that which would be collected under the terms of the cutting permit, for the species of trees harvested from the trespass area. These included Red Cedar, Hemlock, Balsam, Spruce, and Fir in a total volume in excess of 46,000 m^3. Penalty stumpage was calculated at $194,018.21.

On December 15, 1982, a billing order was prepared directing a billing from the Ministry pursuant to the timber trespass report to be sent to Doman Industries. The billing ultimately was not carried out: a notation on the bottom of the billing order, signed by the Regional Manager, read "Disallow - do not process". The Regional Manager, when questioned by this office, stated that he made this order pursuant to a direct request from senior management, and did not agree with the decision to forego a monetary penalty as Doman Industries, in his opinion, had no defence or justification for the trespass. His feelings were shared by the front line personnel of the District office, including the Resource Officers, Operations Manager, and the District Manager. The District Manager at that time - now retired from the Forest Service - stated that one of his main concerns in light of the decision by the Ministry to abandon a monetary penalty without adequate explanation would be the effect on staff morale. He viewed the actions by senior executives of the Ministry to be, in effect, the removal of one of the few "big sticks" which the Forest Service might be able to wield to enforce the provisions of the Forest Act and the cutting permits.

This office found the perspective of senior Ministry officials who were involved in the decision to abandon monetary billing to be markedly different. The decision was said to be based on several factors:

i) The industry was in a severe recession, and Doman Industries, although able to maintain full employment levels at all its sawmills (in this respect, Doman's was unique in the forest industry and regarded with respect and admiration by forest unions), was in essence "owned" by its major creditor, the Royal Bank. The Ministry was of the opinion that a monetary penalty of this magnitude could possibly force Doman Industries into receivership with potential unemployment facing many workers. The company's employment performance did not go unnoticed by the Ministry, which regarded job creation and economic development as a mandate on equal footing with its responsibility to manage and preserve the forest resource. The authority of the Ministry to consider job creation and economic impact can be found in sections 7 and 11 of the Forest Act, and section 4 of the Ministry of Forests Act;

ii) The argument put forward by Doman Industries was that a monetary penalty should be abandoned and replaced instead with a strict requirement that the site be restored and restocked to high silvicultural standards, and that Doman Industries would cover all costs associated with this effort;

iii) Although to many Ministry personnel "the damage had been done" as far as site degradation was concerned, it was not clear to senior members that successful reforestation was not possible. Given the state of silvicultural knowledge existing at the time, it was felt that the benefit of the doubt should be given to the company, and they should be given an opportunity to prove that site restoration was possible.

The differing opinions within the Ministry illustrate vastly different perspectives, which may be regarded as a direct function of the scope of individual decision making responsibility. Senior members were compelled to look at wider factors affecting both industry and company performance; District level personnel sought to enforce their mandate without compromise and to encourage the highest standards of harvesting and silviculture performance.

Senior personnel acted within an environment in which long-term performance and economic impacts were also considered. The fact that different personnel within the Ministry may hold opposite views is not something which this office views as a systemic defect, except to

the extent that it demonstrates inadequate communication between them.

Doman Industries was able to fulfil its commitment to successfully restock areas which suffered site degradation through access logging. An examination carried out at the request of this office by recognized silvicultural experts confirmed that conifers planted in the disputed area are adequate in both size and number for the creation of an economically productive second growth forest.

b) The longboom logging dispute

This is another example of a deep division of opinion within the Ministry, in this case between the District office, Mid-Coast Forest District, and the Regional Office of the Vancouver Forest Region, responsible for the Mid-Coast District. Doman Industries Vice-president for logging and forestry made it clear to the District Manager that his company desired to use the longboom logging machine in the company's Kimsquit harvesting operations. The District Manager was strongly opposed to the use of the machine as "the disproportionately high amount of road building causes site degradation". The District Manager took the position that Doman Industries should prove its ability to successfully rehabilitate sites previously logged with this machine before any further authorization was given, and conveyed this in a strongly worded memo to the Regional Manager, seeking the latter's support (May, 1985).

The result of this memo was that one week later, the Regional Manager, accompanied by the Assistant Deputy Minister (ADM), visited the Kimsquit logging site along with a Doman Industries executive and the District Manager and Operations Manager of the Ministry. It became apparent to this office upon investigation that the District personnel were of the view that observation of site conditions could lead to only one logical and immediate response, and they expected immediate endorsement of their position from the Regional Manager and ADM, or at least encouragement that their efforts were appropriate. Such responses were not forthcoming that day, much to the distress of District officials, who described the ADM as "silent" and "mum" on his visit, which they took to be tacit endorsement of the company's operations. When this office questioned the ADM regarding his conduct during the visit, his response was: "I didn't say anything because there was nothing to say. It's not my style to just speak out...I was there to look and to listen. After that I would go back to my

office and reflect on what I had seen and heard and make a decision".

Ultimately, permission to use the longboom loader was granted on an experimental basis, subject to conditions which were intended to minimize site degradation. As with the decision to allow Doman Industries to rehabilitate damaged land after cat logging, the authorization to use the longboom loader was based on the reasoning by senior personnel that the state of knowledge in the industry did not preclude the successful, productive, non-destructive use of such technology. The issue was not yet settled. At the present time Doman Industries restricts its use of the longboom loader to "cherry-picking" of logs which are accessible from the main logging road, and refrains from the building of spur roads which cause otherwise avoidable site degradation.

The foregoing scenario is a good example of conflicting conclusions being drawn from different perceptions of an event. It may also illustrate an interesting phenomenon in the public service, such that if one's superior does not support a carefully reasoned, logical position, then the reason is sometimes presumed to be the backroom application of political pressure. What this office noted in the extensive series of interviews held was that individuals holding a monitoring or regulatory position at mid or lower levels of management perceived almost without exception the likelihood of political interference in the administration process. It is to be noted that these individuals were also for the most part excluded from the decision-making process conducted at senior levels. In addition, one Ministry official with whom this office communicated stated his belief that some employees of the Crown, as a result of perceiving the possibility of political interference, might tailor their decisions in a manner which they believe will be politically acceptable.

It is important to note the different decision-making environments within which administrative personnel at different levels of the forest service operate. District staff operate on the front lines and have to deal face to face with forest company personnel. They must make decisions and assess performance of the company on a concrete, practical basis and must demonstrate the soundness of their reasoning to senior staff members. Senior staff members, removed from the intensity of the front lines, are likewise expected to apply their experience and knowledge in an objective fashion, taking

into consideration additional factors such as long term company performance, market conditions, general economic conditions, and employment impacts. These factors may provide for the higher level decision-maker a vastly different perspective from the individual who is making day-to-day decisions in the field regarding company performance and compliance. It is therefore not surprising that individuals at different levels of the administrative hierarchy will come to different conclusions when presented with the same facts. It is also a consequence of this phenomenon that front line individuals may on occasion find their fervent presentations rejected and conclude, in the absence of an adequate explanation, that this is evidence of inappropriate political interference to benefit a certain private enterprise.

This office found no evidence that political pressure had been brought to bear in a way that might have influenced administrative dealings as between the Ministry of Forests and Doman Industries.

c) 1987 - Another "Technical" Trespass

In 1987 loggers working for Doman Industries inadvertently trespassed by carrying out logging operations in the area of Moses Inlet, where they possessed no cutting authority in any form. The timber in that area had in fact been set aside by the Ministry for harvesting under competitive bid licensing in the Ministry's Small Business Forest Enterprise Program (SBFEP). Penalty billing, had it been levied in this case, would have been in excess of $300,000.00. The investigating officer for the Ministry found that the fallers had started in the wrong location as a result of confusion between two bays which appeared to be identical on the map. Because of the unintentional circumstances of the trespass, and because Doman's held tenure in nearby lands, a swap was effected, wherein SBFEP received cutting rights for an equivalent portion of Doman's unharvested tenured forest land. This office was informed by the Ministry that the timber received in trade by the Ministry was of a higher value than that harvested by Doman Industries.

The trespass at Moses Inlet seems to be a situation that was handled by the Ministry with common sense, with the result being that an equitable solution for all parties - including the public - was worked out.

Silviculture Issues

The District Resource Officer Silviculture in the Mid-Coast District wrote to the Regional Silviculture Officer on November 13, 1984 concerning Doman Industries' silviculture performance. This letter is included among the materials received and passed on to this office by Mr. Williams. The Resource Officer includes this statement: "I have co-ordinated the planting program in this District since my arrival in 1981. The performance of Doman Industries during my three years here has been nothing short of pathetic." He went on to describe how seedlings ordered and delivered to Doman Industries were not planted, or planted by other companies in areas other than those tenured to Doman Industries because no harvested land was ready for planting.

Upon review, this office found Doman Industries' performance to be a result of a number of factors. The first was the impact of sympathetic administration, which was intended to apply only to matters of cut control and timber utilization standards. However, it was inevitable that such a policy would have an impact on silvicultural performance, given that planting activities are contingent upon harvesting being completed. Therefore, any relaxation of requirements for timber harvesting levels will necessarily reduce the demand for seedlings, many of which may already be on order because of a two year lead-time necessary to sow the seed and grow a seedling to the point where it is ready for planting in the field.

Secondly, and this also relates to sympathetic administration, Doman Industries had shut down its Kimsquit operations, with which the Resource Officer appears to have been primarily concerned, in 1982 and 1983. Doman Industries had found that it could keep its mills in production by purchasing logs on the open market rather than conducting its own comparatively expensive logging operations.

A senior manager of the Ministry, in interviews with this office, stated that Doman Industries silvicultural performance was "initially quite awful. However, silvicultural obligations were less tightly structured then than now with the recent amendments to the Forest Act. There were no PHSP's at that time. In fairness Doman's operations and their silvicultural performance improved with time."

What is again apparent is the critical importance of silviculture, as reflected in the urgency of memoranda circulated at the District level; this also reflects well on the professionalism of the District staff. What became evident in the course of this investigation is that Doman Industries, with respect to all lands which it has harvested in the Mid-Coast District, including lands which were cut in trespass, remains legally required to carry out its silvicultural obligations as established by the terms of the tenure documents, and more recently by amendments to the Forest Act making mandatory the PHSP. The PHSP represents a significant advance in silvicultural administration; it also provides a more effective vehicle by which silvicultural obligations can be defined and legally enforced.

Allowable Annual Cut (AAC)

AAC is of fundamental importance to forest companies; it represents the legal right, subject to performance of other conditions, to harvest a specific volume of timber each year. Provincially, the AAC for each timber supply area, and therefore for the Province as a whole, is set by the Chief Forester acting under the authority of section 7 of the Forest Act. The Act permits the Minister to submit to the Chief Forester his views on economic and social objectives of the Crown for various areas and regions, but places the authority and responsibility for determination of the AAC squarely with the Chief Forester. It is apparent from the broad range of criteria to be assessed by the Chief Forester in determining AAC that the position is to be insulated from purely political considerations.

At the District level, AAC is determined as that level of cut which will provide for sustained yield of timber from an area being properly and continuously restocked to acceptable silvicultural standards. As previously mentioned, it may represent a compromise between resource conservation and economic activity, and has been described by Ministry executives as both a throttle and a brake, which can speed up or slow down the timber harvest.

Banks will look at AAC as a company's major asset for lending purposes, hence any threat to a company's AAC may represent a threat to its source of funding for capital expansion or working capital.

To people who are concerned that the forest base might be in danger of exhaustion due to excessive logging, it may come as a surprise that a company can be penalized

for not harvesting enough timber. The Ministry's philosoply is clear and may be paraphrased as follows:

> We calculate that the forest resource can provide a sustained annual yield of X amount, which we believe should be fully utilized to produce maximum economic benefit to the Province. If a licencee doesn't want to use it, we will licence it to some other party.

AAC is monitored over 5 year periods with the requirement that cut performance averaged over the 5 years be not less than 90% and not greater than 110% of the target level. In addition, licensees may not cut less than 50% and not more than 150% of AAC in any one year, which means that a serious undercut may not be possible to correct by overcutting within the legal limits.

This is the situation Doman Industries found itself in when it was advised by letter June 9, 1986 from the Resource Officer Timber for the Mid-Coast Forest District, concerning its cut control performance. This letter was included among the materials provided to this office by Mr. Williams, and is attached as Appendix I. As noted previously, Doman Industries had severely limited its harvesting activities in 1982, and curtailed harvesting altogether in 1983, as declining timber prices meant that it was more economical for it to buy logs on the open market than harvest timber through its own operations. Many of the logs purchased by Doman Industries were intended for export; had the timber harvesting companies been able to export the logs they would have secured a higher price. However, timber export rules require that a company wishing to export must first offer the logs for sale on the local market at the prevailing local price. Doman Industries took advantage of this by purchasing the logs at comparatively low cost, and processing them in its own mills. This was in essence the intent of the log export rules: to ensure that logs are first used to meet local needs and provide local employment and that only a surplus would be exported. This office was informed during several interviews that Doman Industries buy-rather-than-cut policy earned it the enmity of other firms in the industry which were looking for export profits during bleak economic times.

The letter of June 9, 1986 shows no cut control statistics for the year in which it was written. This is because the 1986 statistics were not yet available. In addition, cut control relief as an element of sympathetic administration remained in effect to the end

of 1983 and, by Ministry policy, the cut control performance was deemed to be 50% if the actual cut was below that percentage. This 50% level could be further increased to a deemed level of 90% (in other words adjusted to the 5 year minimum annual required cut) at the licensee's request. Doman's made this request by letter October 30, 1986 and the request was ultimately granted. The result is shown in Appendix II, being the cut control performance letter to Doman Industries Ltd. dated February 16, 1987. Doman's aggregate performance, after adjustments reflecting sympathetic administration in 1982 and 1983, was 75.6%. Accordingly, the letter advised that "a reduction to your allowable annual cut is under consideration." In light of a possible reduction in AAC, Doman's made extensive representations to Mr. Jack Kempf, Minister of Forests and Lands at that time, citing as reasons for its poor performance factors such as:

a) difficulties in establishing a large operation in an isolated area during initial phase of the cut control period;
b) poor market conditions;
c) reduction of AAC in the Kimsquit and Milton drainages after logging opertions were commenced;
d) alterations to logging in Kimsquit to reduce environmental impact, with attendant increase in timber development cost;
e) strikes, adverse weather conditions delays for consideration of ecological reserves, and other factors.

Perhaps the most persuasive argument for the Ministry was Doman Industries' assertion that "It is highly regarded by union workers as a secure employer. During the past economic recession, Doman kept all of its mills running; thus earning an excellent reputation with the union for not laying workers off."

The employment argument was supported by a letter from the President of I.W.A. Local 1-80. This letter is attached as Appendix III.

Doman Industries' letter to Mr. Kempf also noted that Doman's total quota position supplied only 30% of its mill requirements and therefore the company needed all the supply it could obtain. A financial consideration was also noted: "Finally, the company is currently making plans for the construction of a wood residue processing plant. At this critical time it is

absolutely essential that there be no adverse effects on the financial and other arrangements concerning this mill."

At the time this letter was written, Doman Industries was, exclusive of waste billings, approaching the target production level relative to its AAC. This was not especially persuasive to the staff of the Mid-Coast Forest District and their manager, who argued to senior Ministry officials that the Doman case was not unique to the industry, and that other licensees had managed to meet their AAC requirements in the face of adverse economic and environmental conditions.

Before any decision was made by Mr. Kempf as to a reduction in Doman Industries' AAC, he was succeeded in the Forest portfolio by Mr. Dave Parker, to whom fell the responsibility to determine what action was appropriate in light of the company's undercut position. It should also be noted - and this is covered in greater detail later in this report - that Mr. Kempf had threatened to cancel Doman Industries' forest licences altogether if the required mill was not constructed according to tenure requirements, which would have resulted in cancellation of all AAC. However, Mr. Kempf, on February 6, 1987, granted pursuant to the terms of the licence an extension of time in which to produce concrete plans for a wood residue processing facility; one week later he produced an addendum to the original extension, advising that "a further extension may be considered once we have received details of your success in initiating a new plant which we understand is imminent." Thus, the extension period with option for further extension was still in place when Mr. Parker succeeded Mr. Kempf.

Ultimately, Doman's did have its AAC reduced but not because of undercutting: 5% of its AAC was taken back by the Crown by authority of amendments to the Forest Act, in two installments of 2 1/2%, to free up timber supply for the Small Business Forest Enterprise Program. All major tenure holder in the industry had to sacrifice the same percentage.

Any undercutting penalty which could be levied by way of AAC reduction was waived by Mr. Parker by way of a letter dated April 14, 1988, to Doman Industries. The Minister's decision, as revealed by internal briefing papers to the Minister reviewed by this office, was a trade-off aimed at the maintenance and preservation of highest employment levels under any given economic circumstance. The waiver was given under the explicit condition that Doman Industries would satisfy

the mill construction requirement by way of a two-stage program, Phase I being the construction of a log merchandiser at Duke Point. Phase II is a commitment, subject to "an adequate supply of suitable fibre", to construct a "value added facility appropriate to the volume and type of fibre available."

Mr. Parker stated to this office that his own impression of Mr. Doman through official contact and briefing notes prepared by his staff was that "Doman was honest and was doing his very best". Mr. Parker stated that Mr. Doman's past and present record on the matter of job creation was the primary reason for waiving the undercut penalty. The Minister also noted his own surprise that Mr. Doman's representations to Mr. Kempf did not stress to an even greater degree the company's employment record.

This office takes no position on the appropriateness of the ministerial discretion exercised in favour of Doman Industries. The decision to waive the reduction to AAC appears to be based on criteria relevant to the essential function of AAC as established by the Forest Act and its regulations. This office has found no evidence in the course of this investigation which would suggest that the waiver of AAC reduction was politically motivated, except to the extent that job creation may be a primary political objective. Nor was any evidence found to suggest that the Minister was acting under direction from the Provincial Cabinet.

Ministry documents reveal that four other licensees failed to meet the 5 year - 90% cut control requirement during the 1982 - 1986 cut control period (Appendix V); two of these licensees suffered reductions in AAC of 2.8% and .5% respectively; the remaining two licensees were spared any reduction in AAC because of the Ministry's finding that their undercut position was primarily attributable to poor market conditions during the recessionary period. Doman Industries' cut control performance in 1987 and 1988 has been approximately 108% and 123% - the maximum 5 year average cut without penalty, as previously noted, is 110%.

In this investigation, two collateral issues arose, with respect to Doman Industries' AAC and its Kimsquit operations: the first was a major concern expressed by an official of the Ministry of Environment relating to the increase in cut in the Kimsquit River area from 140,000 m^3/yr. to 200,000 m^3/yr. The second issue

involved the question of why Doman Industries was not included on a list of licensees whose timber harvest was below 90% of AAC over the 1982 - 1986 cut control period.

With respect to the issue of a cut increase, it should be noted that this is not the grant of an increase to the firm's AAC, which is expressed as a total volume of timber harvested from a specific timber supply area (TSA) annually. Rather, it was an increase in the harvest allowed within a specific "Chart area" (a sub-unit of a timber supply area). Thus it is possible for a company to sustain a reduction in its total AAC while increasing its annual cut in certain chart areas. The specific chart area simply represents an increased portion of the total cut.

The Environment Ministry official's letter of May 5, 1987, included among Mr. Williams' documents, indicated extreme disapproval of what he referred to as the Ministry of Forests' "unilateral decision" to approve Doman Industries' application for an increased cut in the Kimsquit operation. The letter cited impact on wildlife habitat - areas supporting grizzly bear and moose - as a reason for reducing rather than increasing the cut. It also referred to various technical inadequacies as perceived in the company's operation, arguing that Doman Industries was already taxed beyond the limits of its engineering capabilities.

It is evident to this office that the decision of the Ministry of Forests was not made in the absence of data from the Ministry of Environment. It is also evident that there was a significant difference of opinion between the ministries as to whether the Kimsquit could support this level of cut without serious environmental consequences. The Ministry of Forests' former District Manager stated to this office that he encouraged the formation of a planning exercise known as a Sub-Unit Plan (SUP) for the Kimsquit, as early as 1979, as a way of averting potential negative impacts through cooperative planning. He stated that he recommended that the Ministry of Environment conduct a wildlife study for the area - the Ministry of Environment apparently had funds to study only one area for that fiscal year and agreed to look at the Kimsquit. He also pointed out that the plan called for preservation of at least 50% of the wildlife habitat, but the Ministry of Environment found this unacceptable and did not sign the SUP. However, the Environment Ministry official was able to negotiate certain areas in which no logging would be conducted, such as near streams and foraging areas frequented by

certain wildlife; as a result, wildlife were able to survive the logging without severe negative impact.

The former District Manager, Mid-Coast, also stated that the rationale for an increased cut in the Kimsquit was to enable Doman Industries to utilize economies of scale, as the company had by then established its operations in the Kimsquit at considerable expense and would face major costs and delays in attempting to develop other chart areas at the same time.

It was stated to this office by several senior administrators that planning deficiencies had existed not only with Doman Industries but to a significant extent with the District Office of the Ministry of Forests. One official stated that it would have been virtually impossible for Doman Industries to satisfy fully the AAC requirements with the specific chart areas it had been given, and this reflected, he said, on the planning abilities of the Mid-Coast Forest District. Another administrator, while agreeing that Doman's should have had more chart areas, also noted that in fairness the District Office, in his opinion, had inadequate resources with which to do its job.

The strong defence of environmental values put forward by the Environment Ministry official raises the question as to how such conflicts between ministries can be reconciled. It would seem that the answer lies within the concept of inter-ministerial planning as alluded to in his letter of May 5, 1987, and as recognized by the Forests District Manager in his call for creation of a sub-unit plan. However, a special ad hoc plan of this type, while useful, may not fully serve the purpose of providing for a continuous and meaningful exchange of information and perspectives between ministries. The restoration of what were formerly known as "regional resource management committees" to the administration of timber tenures could achieve this purpose. Such committees should have, at the very least, a foundation in Regulations, and be officially sanctioned so that ministries do not have to rely on the exigencies of local resource use conflicts as a catalyst for information exchange and planning functions.

[The principles upon which this observation is founded can be reviewed in the 1988 Ombudsman Annual Report under the heading "Integrated Resource Management".]

This office makes no finding as to the appropriateness of the decision by the Ministry of Forests to increase Doman Industries' rate of cut in the Kimsquit. It is

apparent that the decision was made at the administrative level - indeed, Mid-Coast staff did not take issue with the company's request - and was made for reasons consistent with established forest administration practice.

With respect to the second issue relating to the absence of Doman Industries from a list of licensees whose average annual cut was less than 90% of AAC, this office found upon investigation that this suspicious occurrence had a simple explanation. The author of the document attached as Appendix IV was questioned by this office regarding Doman Industries' absence from the list. He explained that at the request of a senior staff member he hastily assembled the list relying on memory rather than computer records to which he could have gained access. He did not regard this as an improper action as the list was for internal use and verification by District staff, and subject to correction. It was sent to District Offices by fax machine, and a reply was received from the Mid-Coast district the following day, noting that not only was Doman absent, but that several companies on the list were within cut control requirements and should have not been included. In response to this information he immediately prepared a corrected list (Appendix V) and sent it out September 2, 1987.

Mill Construction

As previously noted, the three TSHL's which Doman Industries obtained for the Mid-Coast in 1977 carried the condition that the company would construct not only a wood processing facility (sawmill or other value-added plant) but also a pulp mill with a capacity of 300 tons/day, to commence operations by December 31, 1981. Performance bonds were also submitted to the Ministry and continue to be held as security, in the total amount of $300,000.00.

An internal memo prepared for the Minister in May of 1980 showed that Doman Industries at that time requested an extension of the December 31, 1981 deadline to June 30, 1984. The company cited difficulties in obtaining firm commitments from prospective pulp customers, as well as logistical difficulties in obtaining both electrical power and an adequate water supply to the proposed plant site at Duke Point. For both insurance and practical reasons, an artificial water supply had to be created at Duke Point for the construction of the sawmill; this large pond utilized water brought at Doman Industries' expense by continous tanker truck operations.

The briefing memo to the Ministry noted that B.C. Hydro's commitment to Doman Industries was to deliver power to the site by December 31, 1983. This was the date recommended to and accepted by the Minister as the new date by which the pulp mill should be operating, and therefore constituted the new deadline. A 30 month construction period was forecast with a requirement to commence construction by June 30, 1981.

In 1982, to comply with the requirements of the new Forest Act, the three TSHL's were discontinued and rolled over into a different form of tenure with similar rights and obligations. Two forest licences were issued in place of the TSHL's; issuance dates were October 25, 1982, and November 1, 1982. These licences carried substantially the same covenants for performance in the construction of a pulp mill, stating, "The licensee covenants that it will diligently pursue its program for the establishment of a pulp mill capable of producing at least 300 tons of pulp or paper per day...". It is evident that the primary goal of the Ministry in pursuing this covenant with Doman Industries was not enhancement of pulp production in the province but rather the generation of employment opportunities. This is apparent when one examines the revision to this covenant, expanded so as to provide Doman Industries the option to construct either a pulp mill"...or a wood residue processing facility that employs the same number of personnel as a 300 ton per day pulp mill would, at a location approved by the licensor." It is also evident that economic circumstances had an impact on the deadline for commencement of operations incorporated into the new forest licences: the deadline was extended to December 31st, 1986.

The sawmill required by the terms of the original TSHL's was constructed, in the words of a Ministry briefing note, "in a timely fashion". Mr. Doman stated to this office that construction of a sawmill in the early 80's was essentially "an act of faith", as the conventional wisdom of the marketplace would not have called for major capital expenditures in the face of a possible recession.

Doman Industries, according to materials received by the Ministry, had significant losses in the period of 1981 to 1986. The company cited these losses in a letter to Mr. Kempf dated December 17, 1986. The company acknowledged the December 31, 1986, deadline and sought an extension of that deadline to December 31st, 1990.

Mr. Kempf's response was as previously noted: an extension was granted, with the possibility of further extensions only if the Ministry received details of Doman Industries' "success in initiating a new plant."

Responsibility for monitoring the deadlines passed thereafter to Mr. Kempf's successor, Mr. Parker. Mr. Parker was briefed as to Doman Industries performance (mill obligations and cut control) at the end of April, 1987.

During 1987, Doman Industries pursued the possibility of a waferboard manufacturing plant to satisfy mill construction obligations; project financing was actively negotiated. In December of 1987, the Minister provided confirmation that a joint venture waferboard facility at Duke Point, employing 80 - 85 people, would satisfy the requirements of the Forest Licences.

The joint venture waferboard plant was abandoned several months later in favour of Doman Industries' proposed log merchandiser plant at Duke Point, to be operational December 31, 1988. Thirty-five permanent new jobs were forecast with the construction of the log merchandiser; an additional 50 jobs were projected with Phase II, being a value added facility which remains currently at the conceptual stage.

Doman Industries ultimately followed through on the assurance of a log merchandiser, although logistical delays set back the commencement of operations to July 1989. The facility utilizes waste wood, which formerly would have been abandoned as unmerchantable in any form, through a system of saws, conveyors, and chippers to identify and extract any wood which may be suitable for the production of dimension lumber at the company's adjacent sawmill on Duke Point. The remainder of the wood is converted into chips for either trading with pulp mills for sawlogs, or utilization at Doman Industries' newly acquired pulpmills at Woodfibre and Alice Point.

The extensions obtained by Doman Industries can be viewed with suspicion when considered in combination with the company's inadequate harvest performance in the Mid-Coast Forest District. Middle management of the Ministry expressed consistent displeasure at the company's overall performance and at various times recommended either a reduction in AAC or cancellation of the tenures altogether for non-performance.

On the other hand, Doman's record in employment creation and preservation was exemplary and perhaps without equal

in the province, according to the I.W.A. This, as previously stated, was a Ministry priority on equal footing with the objective of resource renewal (silvicultural management). In addition, Doman Industries' cut control performance showed steady improvement, as did its silvicultural performance, as it established itself as a logging operation in the Mid-Coast. The extensive interviews held and documentation reviewed by this office support the finding that Doman Industries' situation was consistently and objectively analyzed by the Ministry, and decisions were made in accordance with established Ministry priorities.

This office found no evidence that the administration of Doman Industries' timber tenures, with attendant rights and obligations, was at any time subject to inappropriate political interference. There were a number of instances in which the company received the benefit of Ministry forbearance, and it appears that the judgment of the Ministry has been vindicated as to the critical questions of adequate harvest performance, silvicultural renewal of the resource, and job creation. Thus, while the Ministry could also have cancelled Doman Industries' tenures entirely at certain points, there is no basis upon which this office is able to criticize administration of the tenures as carried out by the Ministry of Forests. However, as observed above, inadequate communication regarding the many issues surrounding proper forest management contributed to the differences in opinion and suspicion in this case among the various levels of management in the Ministry of Forests. In cases where a policy decision has been made to depart significantly from established standards, it is vitally important that senior management advise field staff fully as to all details and reasoning involved in the decision and its application to local administration.

Stephen Owen

Stephen Owen
Ombudsman

APPENDIX I

Province of
British Columbia

C. F st Service
Box 190
Hagensborg, B.C.
V0T 1H0

(1)

Doman Industries Ltd.
3rd Floor, 435 Trunk Road
Duncan, B.C.
V9L 2P8

DATE: June 09, 1986

FILE: F.L. A16845 Cut Control

Dear Sirs:

Reference is made to your Forest Licence A16845 in the Midcoast T.S.A. The period January 1, 1982 to December 31, 1986, has been designated as your five year cut control period. Your harvest in any one year of your cut control period must be within fifty percent of your allowable annual cut. Your harvest in any five-year cut control period must be within ten percent of your total allowable cut for that period. Notwithstanding the foregoing, contractual provisions under previous agreements shall be honoured. Any overcut carried into this cut control period from a previous one will be considered as a harvest in this period, and your aggregate cut position must be within ten percent of your total allowable cut for this cut control period.

Our records indicate that your allowable annual cut and production record since the start of the above mentioned cut control period are as follows:

YEAR OF CUT CONTROL PERIOD: 4

YEAR	Volumes in Cubic Metres 1982	1983	1984	1985	1986	5 YEAR TOTAL
AAC	414610	414610	414610	414610	414610	2073050
ADJUSTMENT						
OVERCUT						0
UNDERCUT	51825	51825	51826	51826		207302
OTHER						0
AARC	466435	466435	466436	466436	414610	2280352
ACTUAL CUT	120514	25	141728	196223		458490
WASTE	1936	0	17377	38641		57954
UNDERCUT ADJ*	84855	207280	0	0		292135
TOTAL CUT	207305	207305	159105	234864	0	808579
% COMPLIANCE	50.0%	50.0%	38.4%	56.6%	0.0%	39.0%

PROJECTED CUT PER YEAR: 1471773.0
PERCENT OF AAC.....355.0%

The actual volume cut and billed between January 1 and December 31 of 1985 was 196 223 m3.

The total cut for 1985 includes 38 641 m3 of recoverable wood residues estimated from sample plots that were established during the year.

Your cut during the first four years of your current five year cut control period has been so low that even if you cut 150 percent in the fifth year, you will be in violation of your cut control requirements. You should cut 150 percent of your A.A.C., or 621 915 m3 this year. Any cut in excess of this volume would be a violation of your annual cut control requirement, and would be penalty billed. Cutting the suggested volume will still leave you in an undercut situation, which will be dealt with at the end of your current cut control period.

Attached is the summary of scale segregated by timber mark for this licence.

This letter constitutes a statement for the purposes of the cut control provisions of this licence.

IRH/ks

Ian R. Hamann, P.Eng., R.P.F.
Resource Officer Timber
Mid Coast Forest District

APPENDIX II

Province of
British Columbia

District Manager
B.C. Forest Service
Box 190
Hagensborg, B.C.
V0T 1H0

F/A

Doman Industries Ltd.
3rd Floor, 435 Trunk Road
Duncan, B.C.
V9L 2P8

DATE: February 16, 1987

FILE: A16845 Cut Control

5-72-2-19 Doman Industries Ltd

RECEIVED
FEB 25 1987
TIMBER MANAGEMENT BRANCH
MINISTRY OF FORESTS AND LANDS

Dear Sirs:

Reference is made to your Forest Licence A16845 in the Midcoast T.S.A. The period January 1, 1982 to December 31, 1986, has been designated as your five year cut control period. Your harvest in any one year of your cut control period must be within fifty percent of your allowable annual cut. Your harvest in any five year cut control period must be within ten percent of your total allowable cut for that period. Notwithstanding the foregoing, contractual provisions under previous agreements shall be honoured. Any overcut carried into this cut control period from a previous one will be considered as a harvest in this period, and your aggregate cut position must be within ten percent of your total allowable cut for this cut control period.

Our records indicate that your allowable annual cut and production record since the start of the above mentioned cut control period are as follows:

YEAR OF CUT CONTROL PERIOD: 5

	Volumes in Cubic Metres					
YEAR	1982	1983	1984	1985	1986	5 YEAR TOTAL
AAC	414610	414610	414610	414610	414610	2073050
ADJUSTMENT						
OVERCUT						0
UNDERCUT	51825	51825	51826	51826		207302
OTHER						0
AARC	466435	466435	466436	466436	414610	2280352
ACTUAL CUT	120514	25	141728	196223	373066	831556
WASTE	1936	0	17377	38641	56189	114143
UNDERCUT ADJ.	250699	373124	0	0	0	623823
TOTAL CUT	373149	373149	159105	234864	429255	1569522
% COMPLIANCE	90.0%	90.0%	38.4%	56.6%	103.5%	75.7%

PROJECTED CUT PER YEAR: 0.0
PERCENT OF AAC.....

The total cut for 1986 includes 56 189 m3 of recoverable wood residues estimated from sample plots that were established during the year.

In accordance with your request (dated October 30, 1986) and existing policy, your 1982 and 1983 cut has been adjusted to 90% compliance based on your AAC.

Your cut for the past five year cut control period is less than 90 percent of the total allowable cut and is therefore in violation of cut control requirements.

A reduction to your allowable annual cut is under consideration.

Before a decision is made, you may submit in writing within thirty (30) days from the date of this letter your reasons for not meeting cut control requirements.

If you do not reply within 30 days, or if your reasons for the undercut will not be considered satisfactory, your A.A.C. may be reduced by the volume of undercut.

Attached is the summary of scale segregated by timber mark for this licence.

This letter constitutes a statement for the purposes of the cut control provisions of this licence.

IRH/ks

for R. W. Thomas, A.Sc.T.
District Manager
Mid Coast Forest District

c.c. Timber Management Branch, Victoria
c.c. Vancouver Forest Region

APPENDIX III

L5-10

INTERNATIONAL WOODWORKERS OF AMERICA
LOCAL 1-80
PHONE 748-
P.O. BOX 12
151 KAE ROAD
DUNCAN, B.C.

January 16, 1987.

The Honourable Jack Kempf,
Minister of Forests,
Parliament Buildings,
VICTORIA, B.C.
V8V 4R6.

Dear Mr. Minister:

We have been informed by Doman Industries that your Ministry is conducting a review of Doman's timber licenses in the mid-coast area with a view to either cancelling the licenses or substantially reducing Domans allowable cut.

As President of I.W.A. Local 1-80 I feel that I should inform you of our feelings in this matter. During the period 1979-1985, I.W.A. Local 1-80 lost approximately 40% of our membership due to permanent plant closures, technological change and cost cutting measures taken by many of the employers in this area. The local union had an average membership of almost 5,000 per month by 1985. That average has been reduced to something less than 3,000 members.

Domans has been a notable exception to that trend as they have kept their mills operating at almost peak levels and have not contributed to the increased unemployment levels in the Cowichan Valley.

Our Union supports the stated philosophy of the Government with regard to either using the allocated timber or losing the rights to that timber. However, Domans is not the only company who has not achieved full compliance with their license requirement. In addition other Companies such as Crown Forest have substantially reduced their cut on their private timber lands, while maintaining their public timber licenses. We question whether these Companies can be said to be living up to not only the intent of the Forest Act, but the spirit of it as well.

Mr. Minister we would like nothing better than to see Domans build an additional sawmill and a pulp mill in the Duncan, Nanaimo area. One or both of those projects would do a great deal to relieve some of our unemployment problems.

.....2

However, we also recognize that under the current uncertain future of the forest industry that if the Government were to remove the timber from Domans and award it to some other Company, it is unlikely that anyone would undertake to build more manufacturing capacity in the foreseeable future.

There is one more point which we would like to make. During the recent set of negotiations with the Forest Companies, Domans was the first company of many to break ranks with FIR. While the merits of that decision will be debated for many years, one thing is clear, the major forest companies do not have much love for Domans. If Domans were in a position of having to rely on the majors for more of their timber supply than they already do, it is our sincere belief that Domans will be placed in a position of not being able to acquire the timber necessary to operate at their current levels.

While we recognize that these things may be no help in rationalizing technical arguments around Domans compliance under their timber licenses, we do expect that as Minister you will be very cautious in making any decision which could jeopardize the health of a British Columbia owned and operated Company.

Yours truly,

Roger Stanyer,
President.

RS/cr.
oteu 15

APPENDIX IV

Ministry of Forests and Lands, Forest Service

All District Offices
Vancouver Forest Region

September 1, 1987

From: Vancouver Region

File: 850-5-1-1

Re: Reduction of AAC for Forest Licences and Timber Sale Licences

The following is a list of Forest Licences and Timber Sale Licences (Major) where the harvest fell below the 90% minimum volume required for the last 5 year cut control period. These licences are:

FL A16842	B.C.F.P. Ltd	Mid Coast
TSL A16868	Mill & Timber Ltd	Mid Coast
FL A16871	Goodwin Johnson Ltd	Queen Charlotte
TSL A16879	Queen Charlotte Sawmills Ltd	Queen Charlotte
FL A19207	Prettys Timber Co Ltd	Chilliwack
FL A19210	Scott Paper Ltd	Squamish
TSL A20470	Joe Johnson Ltd	Chilliwack
TSL A20485	L. E. Talbot	Squamish

If there are any other licensees in the Region who have not met minimum cut control requirements and require a notice under section 55 (1) of the Forest Act, please advise the undersigned as soon as possible.

G. R. Ursel

GRU/nms

APPENDIX V

Ministry of Forests and Lands, Forest Service

All District Offices
Vancouver Forest Region

September 2, 1987

From: Vancouver Region

File: 850-5-1-1

Re: Reduction of AAC for Forest Licences and Timber Sale Licences

The writer's listing dated September 1st, 1987 included a number of errors.

The following is a corrected list of Forest Licences and Timber Sale Licences (Major) where the harvest fell below the 90% minimum volume required for the last 5 year cut control period. These licences are:

FL A16842	B.C.F.P.	Mid Coast
FL A16845	Doman Industries Ltd	Mid Coast
TSL A16868	Mill & Timber Ltd	Mid Coast
FL A19207	Prettys Timber Co Ltd	Chilliwack
TSL A20470	Joe Johnson Ltd	Chilliwack

If there are any other licensees in the Region who have not met minimum cut control requirements and require a notice under section 55 (1) of the Forest Act, please advise the undersigned as soon as possible.

G. R. Ursel

GRU/nms